

### **341.190 Records and reports -- Confidential treatment -- Exceptions.**

- (1) As used in this section:
  - (a) "Agent" means one who acts for or in the place of an individual, an employing unit, or a public official by the authority of that individual, employing unit, or public official; and
  - (b) "Public official" means an official, agency, or public entity within the executive branch of federal, state, or local government who or which has responsibility for administering or enforcing a law, or an elected official in federal, state, or local government.
- (2) Each employing unit shall keep true and accurate work records of all workers employed by it, of the wages paid by it to each worker, and such other information as the secretary of the Education and Workforce Development Cabinet considers necessary for the proper administration of this chapter. The records shall be open for inspection and subject to being copied by the secretary or his or her authorized representatives at any reasonable time and as often as necessary.
- (3) The secretary may require any employing unit to furnish to the cabinet at its central office from time to time information concerning the total amounts of wages paid, total number of persons employed, an individual record of each worker employed, an individual record of each worker whose employment has been terminated or who has been laid-off, an individual wage and hour record of each worker employed part time entitled to benefits, and other related matters, including hours worked, which the secretary considers necessary to the effective administration of this chapter.
- (4) Information obtained from an employing unit or individual and other records made by the cabinet in the administration of this chapter are confidential and shall not be published or be open for public inspection, except as provided below and in subsections (5) and (6) of this section:
  - (a)
    1. Public officials and the agents and contractors of public officials, in the performance of their official duties, may be provided information and records, but the public officials receiving the information and records shall assure the confidentiality, as required in this section, of all information and records so released. Official duties do not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or a political party;
    2. A contractor shall include a temporary staffing engaged by the cabinet for any purpose in connection with the administration of this chapter; and
    3. Disclosures shall be made under this subsection only if the recipient has entered into a written, enforceable, and terminable agreement with the cabinet and has satisfied the safeguards set forth in federal statutes and regulations;
  - (b)
    1. An individual or employing unit shall be provided, upon request, information and records maintained by the cabinet in the administration of wage records, claim, reserve account, reimbursing employer account, or any proceeding under this chapter to which it

is a party.

2. An agent of an individual or employing unit shall be provided the individual's or employing unit's information and records upon the presentation of a written release or other legally enforceable evidence of the informed consent of the individual or employing unit.
  3. An attorney retained by an individual or employing unit in any proceeding under this chapter shall be provided the individual's or employing unit's information and records if the attorney asserts in writing that he or she is representing that individual or employing unit.
  4. An elected official performing constituent services shall be provided the individual's or employing unit's information and records if the official presents reasonable written evidence that the individual or employing unit has authorized the disclosure;
- (c) A third party other than an agent, or third party on an ongoing basis, shall be provided the individual or employing unit's information and records if the individual or employing unit to whom the information pertains provides a signed written release which shall specify:
1. The information and records to be disclosed;
  2. The purpose for which the information and records are sought, specifying the expected service or benefit to the individual signing the release, or specifying their use in the administration or evaluation of the public program to which the release pertains;
  3. Assurance that the information and records shall be used solely for that purpose;
  4. All parties who may receive the information and records disclosed; and
  5. That state government files shall be accessed to obtain information and records.

Disclosures shall be made under this subsection only if the recipient has entered into a written, enforceable, and terminable agreement with the cabinet and has satisfied the safeguards set forth in federal statutes and regulations;

- (d) Precedential orders issued by the Unemployment Insurance Commission shall be released provided that Social Security numbers and employer identification numbers have been removed and the disclosure is otherwise consistent with federal and state law;
- (e) A public official with authority under state or federal law to obtain the information and records by subpoena, other than a clerk of court on behalf of a litigant, shall be provided information and records upon service of a duly issued subpoena;
- (f) A federal official, when required for the purposes of oversight and auditing of the unemployment insurance program, shall be provided information and records;
- (g) Statistical information derived from information and records obtained or

made by the cabinet may be released to the Bureau of Labor Statistics under a cooperative agreement or may be published, if it in no way reveals the identity of any individual or employing unit; and

- (h) Nothing in this section shall preclude the secretary or any employee of the cabinet from testifying in any proceeding under this chapter or in any court, or from introducing as evidence information and records obtained or made by the cabinet in an action for violation of state or federal law to which the cabinet is a party or upon order of the court.
- (5) Disclosures shall be made under subsection (4) of this section only if:
- (a) The disclosure is necessary for the proper administration of the unemployment insurance program;
  - (b) No more than an incidental amount of staff time or a nominal processing cost is required to make the disclosure; or
  - (c) The cost of providing the information and records is paid by the recipient prior to the disclosure, consistent with federal laws and regulations, except this requirement shall not apply to disclosures made under subsection (4)(f) of this section nor to disclosures made under subsection (4)(e) and (h) of this section if the cabinet attempts without success to recover the cost of disclosure. For disclosures made to other public officials under subsection (4)(a) of this section, this requirement shall be met if the recipient provides a reciprocal benefit to the cabinet in the administration of the unemployment insurance program, or if a reasonable reimbursement for the disclosure shall be determined under federal law.
- (6) Recipients of information and records disclosed under subsection (4)(a) and (c) of this section may redisclose the information and records only as follows:
- (a) To the individual or employing unit who is the subject of the information and records;
  - (b) To an attorney or duly authorized agent representing the individual or employing unit;
  - (c) In any civil or criminal proceedings for or on behalf of the recipient;
  - (d) In response to a subpoena but only as provided in subsection (4)(e) and (h) of this section;
  - (e) A public official may redisclose to an agent or contractor, but only if the public official retains responsibility for the uses of the confidential information and records by the agent or contractor and subject to the safeguards set forth in the agreement required under subsection (4) of this section;
  - (f) A public official may redisclose to another public official;
  - (g) A state or local child support enforcement agency may redisclose to its agent under contract for the purpose of carrying out child support enforcement; or
  - (h) When specifically authorized by a written release for redisclosure that meets the requirements of subsection (4)(c) of this section.
- (7) Any disclosure or use of information and records that is inconsistent with the provisions of this section shall be subject to the penalty prescribed in KRS

341.990(11).

- (8) No information and records held confidential under subsection (4) of this section shall be the subject matter or basis for any suit for slander or libel in any court, but no employer or employee, or his representative, testifying before the commission, the secretary, or any duly authorized representative thereof, shall be exempt from punishment for perjury.

**Effective:** June 29, 2017

**History:** Amended 2017 Ky. Acts ch. 133, sec. 2, effective June 29, 2017. -- Amended 2009 Ky. Acts ch. 11, sec. 74, effective June 25, 2009. -- Amended 2008 Ky. Acts ch. 111, sec. 1, effective July 15, 2008. -- Amended 2006 Ky. Acts ch. 211, sec. 137, effective July 12, 2006. -- Amended 1996 Ky. Acts ch. 266, sec. 6, effective July 15, 1996; and ch. 271, sec. 17, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 6, sec. 3, effective July 13, 1990. -- Amended 1980 Ky. Acts ch. 188, sec. 267, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 74, Art. VI, sec. 99. -- Amended 1950 Ky. Acts ch. 206, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4748g-4.